

# JacksonLewis

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April 24, 2023

**VIA FIRST CLASS MAIL**

Judge Gary R. Brown  
United States District Court  
Eastern District of New York  
100 Federal Plaza, Room 840  
Central Islip, NY 11722

**Re:           Hugh Birthwright v. Advance Auto Parts  
              Case No. 22-cv-00593**

Dear Judge Brown:

We are counsel for the Defendant. Defendant moved to dismiss the Complaint under Fed. R. Civ. P. 12(b)(6) on the grounds that New York law does not provide a private right of action for a violation of the payroll frequency provisions of New York Labor Law Section 191, the only cause of action alleged in the Complaint. That motion is fully briefed and pending before the Court. We are writing to alert the Court that the New York State Supreme Court, Appellate Division, Second Department, heard oral argument in a case addressing this very issue in *Grant v. Global Aircraft Dispatch*, Case No. 2021-03020, a case cited in Defendant's brief. The lower court in *Grant* agreed with Defendant here and dismissed a claim asserting a violation of the pay frequency provisions of NYLL Section 191, holding the Legislature did not authorize a private right of action. *See Grant v Global Aircraft Dispatch, Inc.*, 2021 N.Y. Misc. LEXIS 11125 (Sup. Ct., Queens County Apr. 20, 2021). That appeal was fully briefed a year ago, and last Friday, April 21, 2023, the court heard argument. We expect a decision shortly. We are alerting the Court of this development should the Court wish to wait to receive further guidance from the Second Department prior to issuing a decision on the pending motion to dismiss.<sup>1</sup>

Thank you for your attention to this matter.

Very truly yours,  
JACKSON LEWIS P.C.

*Jeffrey W. Brecher*

JEFFREY W. BRECHER

4882-2416-5471, v. 1

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<sup>1</sup> The oral argument can be found here at hour 2:04:  
[https://wowza.nycourts.gov/vod/wowzaplayer.php?source=ad2&video=OA\\_2023-04-21\\_09-59-39.mp4](https://wowza.nycourts.gov/vod/wowzaplayer.php?source=ad2&video=OA_2023-04-21_09-59-39.mp4)